

REMARKS

[0001] Applicant respectfully requests entry of the following remarks and reconsideration of the subject application. Applicant respectfully requests entry of the amendments herein. The remarks and amendments should be entered under 37 CFR. § 1.116 as they place the application in better form for appeal, or for resolution on the merits.

[0002] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-28 and 33-40 are presently pending. Claims 230 and 28 are amended herein. Claims 29-32 are withdrawn or cancelled herein. No new claims are added herein.

Formal Request for an Interview

[0003] If the Examiner's reply to this communication is anything other than allowance of all pending claims, then I formally request an interview with the Examiner. I encourage the Examiner to call me—the undersigned representative for the Applicant—so that we can discuss this matter so as to resolve any outstanding issues quickly and efficiently over the phone.

[0004] Please contact me to schedule a date and time for a telephone interview that is most convenient for both of us. While email works great for me, I welcome your call as well. My contact information may be found on the last page of this response.

Claim Amendments

[0005] Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 23 and 28. Applicant amends claims to highlight claimed features. Such amendments are made to expedite prosecution and more quickly identify allowable subject matter. Such amendments are merely intended to emphasize the claimed features, and should not be construed as further limiting the claimed invention in response to the cited reference.

[0006] Claim 23 is amended to correct a typographical error. Claim 28 is amended to include subject matter from dependent claim 32. Support for the further amendment to claims 28 is found in the specification at least at page 9.

Information Disclosure Statement

[0007] Applicant respectfully traverses the Examiner's failure to consider the submitted Non Patent Literature in the Information Disclosure Statement (IDS) returned December 12, 2007. Applicant respectfully contends that the submitted IDS complies with the requirements to be considered by the Examiner, and requests consideration especially in light of the instruction give in section 2004 of the MPEP. Section 2004, point 10, specifically states that "when in doubt, it is desirable and safest to submit information." "Even though the attorney, agent, or applicant doesn't consider it necessarily material, someone else may see it differently and embarrassing questions can be avoided." *Id.* The court in *U.S. Industries v. Norton Co.*, 210 USPQ 94, 107 (N.D. N.Y. 1980) stated "In short, the question of relevancy in close cases, should be left to the examiner and not the applicant." Thus, Applicant respectfully requests that the Examiner consider the cited documents.

Claim Rejections under § 102

[0008] The Examiner rejects claims 1-40 under § 102. For the reasons set forth below, the Examiner has not shown that the cited reference anticipates the rejected claims. Accordingly, Applicant respectfully requests that the rejections be withdrawn.

[0009] The Examiner's rejections are based on **Caswell**: *Caswell, et al.*, US Patent No. 6,336,138 (issued January 1, 2002).

Overview of the Application

[0010] The Application describes a technology for designing, deploying and managing distributed applications within a distributed computing system.

Cited Reference

[0011] Caswell describes a technology for modeling a selected service within a network environment.

Anticipation Rejections

[0012] Applicant submits that the anticipation rejections are not valid because, for each rejected claim, no single reference discloses each and every element of that rejected claim.¹ Furthermore, the elements disclosed in the single reference are not arranged in the manner recited by each rejected claim.¹

¹ "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); "The identical invention must be

[0013] The Examiner rejects claims 1-40 under 35 U.S.C. § 102(b) as being anticipated by Caswell. Applicant respectfully traverses the rejections of these claims. Based on the reasons given below, Applicant asks the Examiner to withdraw the rejections of these claims.

Independent Claim 1

[0014] Applicant maintains that Caswell does not anticipate this claim because it does not disclose an identical invention in as complete detail as this claim. For example, Caswell lacks the following elements as recited in this claim (with emphasis added):

- “at least one definition of **entities to be implemented in a distributed-computing system**”
- at least one relationship that identifies links between the **entities to be implemented in the distributed-computing system**, such that the schema is used by **a development tool** and a **deployment tool** to implement the definition and the relationship”

[0015] The Examiner indicates that Caswell col. 5, ll 49-52 discloses each of the elements and features of claim 1. Caswell discloses “Network Nodes” connected

shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); also see MPEP §2131.

¹ See *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

together by a network. Caswell describes the nodes as hosts, servers, network links, and services. Caswell discloses multiple computing systems distributed across a network. However, Caswell does not disclose a “distributed-computing system.” Independent computing systems distributed over a network are not equivalent to a distributed-computing system as recited in claim 1. Page 16 of the instant application describes a distributed-computing system as (with emphasis added) “...a set of *related* software and/or hardware resources that work together to accomplish a common function. The systems disclosed by Caswell are intra-dependent, individual systems as they are not designed to work together to accomplish a common function.

[0016] Furthermore, The Caswell col. 5, ll 49-52 is cited as disclosing:

. . .wherein the schema is used by a development tool and a deployment tool

[0017] In contrast, the Caswell citation describes the defining of network links. Caswell does not disclose the use of a schema by a development tool as recited in claim 1. Consequently, Caswell does not disclose all of the elements and features of claim 1. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claim 17

[0018] Applicant maintains that Caswell does not anticipate this claim because it does not disclose an identical invention in as complete detail as recited in this claim (with emphasis added):

- “at least one system definition of a portion of **an application associated with a distributed-computing system**”

- at least **one resource definition that specifies application runtime behavior** associated with the system,”
- “at least **one endpoint definition of communication information** associated with the system”

[0019] As described above with reference to claim 1, Caswell does not disclose a distributed-computing system, which is also recited in claim 17.

[0020] Furthermore, the Examiner indicates that Caswell col. 6, lines 53-59; col.5, lines 57-62 and col. 19, lines 11-31 disclose the features of claim 17. Applicant respectfully disagrees. At [col. 6, lines 53-59], Caswell describes the inspection of nodes in a network in order to determine what resources are being requested and serviced. Caswell does not disclose at least one system definition of a portion of “an application associated with a distributed-computing system” as recited in claim 17. Caswell’s discovery is a collection of discovered information; without any definitive nature as opposed to the definitive “one system definition” recited in claim 17.

[0021] Additionally, the Examiner cites Caswell col. 5, line 57-62 as disclosing:

“at least one resource definition that specifies application runtime behavior associated with the system.”

Applicant respectfully disagrees. In contrast, Caswell describes a template of system resource states for the purpose of detecting undesired resource states. A system state is not equivalent to system behavior.

[0022] Finally, the Examiner cites Caswell col 19, lines 11-31 as disclosing:

at least one endpoint definition that describes communication information associated with the system.

Applicant respectfully disagrees. In contrast, Caswell describes the inspection and parsing of network traffic. Observation of a thing does not necessarily produce a definition of the thing. For example, observing a printed word may yield its usage, its spelling, its grammar, etc., yet does not yield its definition. Similarly, inspection of network packets, while yielding information regarding a node and its communication patterns, is not equivalent to an endpoint definition. Therefore, Caswell's disclosure of packet inspection does not infer or imply an "at least one endpoint definition" as recited in claim 17.

[0023] Consequently, Caswell does not disclose all of the elements and features of claim 17. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claim 23

[0024] Claim 23 recites elements that are similar to those recited in claim 1, and is allowable over the cited reference for at least similar reasons to those given above with reference to claim 1. Namely, Caswell does not disclose a distributed-computing system.

[0025] Furthermore, the Examiner cites Caswell col. 5 lines 37-44 as disclosing the following feature as recited in claim 23:

a system definition model to enable defining...abstractly the specifications of distributed-computing systems and distributed-applications

Applicant respectfully disagrees. Caswell discloses the modeling of a network based upon data collected from the network from application agents and network packet inspection. A model built in such a way is not definitive as it relies only on data collected up to a moment in time. A model built in such a way is also not abstract as it is constructed wholly from concrete data. Therefore Caswell does not disclose a system **definition** model to enable **defining abstractly** the specifications of **distributed-computing** systems and distributed-applications.

[0026] Additionally, the Examiner cites Caswell col.5, lines 49-52 as disclosing:

a schema to dictate how functional operations within the system definition model are to be specified

Applicant respectfully disagrees. Caswell describes “the template defines nodes of various types.” First, Caswell discloses herein a template, while the claim recites a schema. These two concepts are not equivalent. Second, while Caswell “defines nodes” it does not dictate **how** functional operations are to be specified

[0027] Consequently, Caswell does not disclose all of the elements and features of claim 23 in as complete detail as recited in the claim. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claim 28

[0028] Claim 28 recites elements that are similar to those recited in claim 1, and is allowable over the cited reference for at least similar reasons to those discussed above with reference to claim 1. Namely, Caswell does not disclose a distributed application.

[0029] Furthermore, the Examiner cites Caswell col. 5 lines 57-62 as disclosing the following feature as recited in claim 28:

at least one resource definition of an application runtime behavior associated with the component

Applicant respectfully disagrees. First Caswell discloses the definition of nodes and does not disclose the definition of a resource as recited in claim 28. Second, Caswell describes a template of system resource states for the purpose of detecting undesired resource states. A state is not equivalent to a behavior as recited in claim 28.

[0030] The Examiner further cites Caswell col 19, lines 11-31 as disclosing:

at least one endpoint definition of communication information associated with the component.

Applicant respectfully disagrees. Caswell describes the inspection and parsing of network traffic. As discussed above, observation of a thing does not necessarily produce the definition of a thing. Observing a printed word may yield its usage, its spelling, its grammar, etc., yet does not yield its definition. Similarly, inspection of network packets, while yielding information regarding a component and its communication patterns, is not equivalent to an endpoint definition as recited in claim 28. Therefore, Caswell's

disclosure of packet inspection does not infer or imply an “at least one endpoint definition” as recited in claim 28.

[0031] Finally, the Examiner cites Caswell col.5, lines 49-52 as disclosing:

at least one containment relationship specifying an ability of a particular definition to contain members of other definitions

Caswell describes “the template defines nodes of various types.” Caswell does not disclose in the cited passage or at any other location a “containment relationship” or “the ability of a particular definition to contain members of other definitions”.

[0032] Applicant further emphasizes the “application development tool,” the “application deployment tool,” and the “application management tool” via amendment herewith. Caswell fails to disclose each of the elements and features recited in claim 28. Therefore, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claim 33

[0033] Claim 33 recites elements that are similar to those recited in claim 1, and is allowable over the cited reference for at least similar reasons to those given above with reference to claim 1. Namely, Caswell does not disclose a distributed application.

[0034] Furthermore, the Examiner cites Caswell col. 5 lines 49-52 as disclosing the following features as recited in claim 33:

a containment relationship that describes the ability of a particular definition to contain members of other definitions

a delegation relationship that exposes members contained in the particular definition

Caswell describes “the template defines nodes of various types.” Caswell does not disclose in the cited passage or at any other location a containment relationship or ability of a particular definition to contain members of other definitions or a delegation relationship or exposing definition members as is recited in this claim.

[0035] Additionally, the Examiner cites Caswell col.5, lines 53-57 as disclosing:

at least one hosting relationship that identifies ordering relationships between the plurality of definitions

Caswell describes “dependence between nodes.” Caswell’s is directed to surveying an installed implementation and instrumentation its operations. Caswell fails to disclose a “hosting relationship that identifies ordering relationships between the plurality of **definitions**”.

[0036] Consequently, Caswell does not disclose all of the elements and features of claim 33. Accordingly, Applicant asks the Examiner to withdraw the rejection of this claim.

Independent Claims 34 and 38

[0037] Claims 34 and 38 recite elements that are similar to those recited in claim 1, and are allowable over the cited reference for at least similar reasons to those given above with reference to claim 1. Namely, Caswell does not disclose a distributed application.

[0038] Furthermore, the Examiner cites Caswell col. 5 lines 49-52 as disclosing the following feature, as recited in claim 34, for example:

loading a relationship that identifies communication links between the entities in the distributed computing system, wherein the definition and relationship data is used during development and deployment of the distributed computing system

Applicant respectfully disagrees. In the cited passage Caswell discloses a template that defines nodes of various types. Caswell does not disclose a “relationship that identifies communication links”. Furthermore, Caswell does not disclose the use of a definition or relationship during development and deployment of a distributed computing system. Caswell only describes monitoring and managing network nodes.

[0039] Consequently, Caswell does not disclose all of the elements and features of these claims. Accordingly, Applicant asks the Examiner to withdraw the rejection of these claims.

Dependent Claims 2-16, 18-22, 24-27, 35-37, and 39-40

[0040] These claims ultimately depend upon one of independent claims 1, 17, 23, 34, and 38. As discussed above, claims 1, 17, 23, 34, and 38 are allowable over the cited reference. Although it is axiomatic that any dependent claim which depends from an allowable base claim is also allowable, Applicant respectfully traverses the anticipation rejections of the dependent claims.

[0041] For example, regarding claims 24 and 25 reciting a “distributed-application development tool” and a “distributed-application deployment tool,” respectively, the

Examiner relies on Caswell col. 6, lines 53-59, stating regarding each claim that the cited lines refer to *application-specific tools*.

[0042] Furthermore, in the rejection of a “at least one definition includes a resource definition, a system definition and an endpoint definition” recited in claim 4, through piecemeal analysis the “system definition” is also rejected based on Caswell col. 6, lines 53-59, (the rejection referring to *application-specific attributes*) while other portions of Caswell are relied on for the remaining elements of the claim.

[0043] At least portions of claims 6, 17, 32, 36, and 39 are also rejected based on Caswell col. 6, lines 53-59, although each of the rejected elements and features are not the same.

[0044] Applicant maintains that the Examiner has not met the burden to show anticipation of the dependent claims. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); also see MPEP §2131. Moreover, whatever elements may be disclosed by Caswell, are not arranged in the manner recited by each rejected claim.

[0045] Additionally, some or all of these claims may also be allowable for additional independent reasons.

Dependent Claims

[0046] In addition to its own merits, each dependent claim is allowable for the same reasons that its base claim is allowable. Applicant requests that the Examiner withdraw the rejection of each dependent claim where its base claim is allowable.

Conclusion

[0047] All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action.** Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

/Bea Koempel-Thomas 58213/ Dated: 01/30/2009

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